

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 15-1392V

Filed: March 4, 2016

Unpublished

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GAIL BOTELER,

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Petitioner,

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Ruling on Entitlement; Damages

Decision Based on Proffer;

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Concession; Influenza Vaccination;

SECRETARY OF HEALTH

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Shoulder Injury Related to Vaccine

AND HUMAN SERVICES,

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Administration ("SIRVA");

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Special Processing Unit ("SPU")

Respondent.

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*Maximillian Muller, Muller Brazil, LLP, Dresher, PA, for petitioner.*

*Ryan Pyles, U.S. Department of Justice, Washington, DC, for respondent.*

### **RULING ON ENTITLEMENT AND DECISION AWARDING DAMAGES**<sup>1</sup>

**Dorsey**, Chief Special Master:

On November 17, 2015, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,<sup>2</sup> [the "Vaccine Act" or "Program"]. Petitioner alleges that she suffered a shoulder injury caused by the influenza vaccination she received on October 29, 2014. Petition at 1, ¶ 18. Petitioner further alleges that she received the vaccination in the United States and suffered the residual effects of her injury for more than six months. *Id.* at ¶¶ 2, 18-19. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On March 3, 2016, respondent filed her Rule 4(c) report and Proffer on Damages in which she concedes that that the case is appropriate for compensation. Respondent's Rule 4(c) Report and Proffer on Damages at 1. Specifically, respondent agrees "that petitioner's alleged injury is consistent with a shoulder injury related to vaccine administration (SIRVA) . . . [and] further agrees that petitioner's SIRVA was

<sup>1</sup> Because this unpublished ruling and decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2012)). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

caused-in-fact by the flu vaccination she received on October 29, 2014.” Id. at 3. Respondent further agrees that “[n]o other causes for petitioner’s SIRVA were identified . . . [and] the statutory six month sequela requirement has been satisfied.” Id. (citations omitted).

Additionally, “[r]espondent proffers that, based on the evidence of record, petitioner should be awarded \$112,500.00” which represents all elements of compensation to which petitioner would be entitled under § 15(a). Respondent’s Rule 4(c) Report and Proffer on Damages at 4. Respondent represents that petitioner agrees with the proffered award. Id.

**In view of respondent’s concession and the evidence before me, the undersigned finds that petitioner is entitled to compensation. Further, based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in Respondent’s Rule 4(c) Report and Proffer on Damages.**

Pursuant to the terms stated in **Respondent’s Rule 4(c) Report and Proffer on Damages at 3, the undersigned awards petitioner a lump sum payment of \$112,500.00 in the form of a check payable to petitioner, Gail Boteler.** This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Nora Beth Dorsey**  
Nora Beth Dorsey  
Chief Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties’ joint filing of notice renouncing the right to seek review.